

## **REMARKS**

In the Office Action mailed September 10, 2004, the Examiner rejected claims 1 to 20. These rejections are respectfully traversed. This Amendment "A" cancels claims 4 to 8, amends claims 1, and 15, and adds new claims 21 to 24. Accordingly, claims 1 to 3, and 9 to 24 are now pending in this application.

Claims 1 to 3, and 8 to 11 were rejected under 35 U.S.C. 102(b) as being anticipated by Gruel (US 5,887,546). Also, claims 4 to 7 and 15 to 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gruel in view of Toole et al. (US 5,590,623).

Gruel discloses a cat litter box shell 10 which receives at least one litter box 12a, 12b therein in an attempt to contain litter. The shell 10 has a rectangular shaped opening 28 formed near an end of a side wall 18 to permit a cat to enter the shell 10. End walls 20, 22 are provided with openings 30, 32 which are used as handles for the shell 10. The basic idea is that is that you can contain litter etc. by inserting litter boxes 12a, 12b into a shell with "tall walls" 18, 20, 22, 24. This device has several drawbacks which are overcome by the present invention. While the shell 10 may reduce the amount of litter etc. from the litter boxes 12a, 12b which reaches the floor compared to using the litter boxes 12a, 12b without the shell 10, this litter etc. can still escape the litter boxes 12a, 12b and become trapped between the litter boxes 12a, 12b and the shell 10. This "urine trap" can actually result in the need for more frequent cleaning in order to prevent the growth of mold and bacteria. Additionally, the openings 28, 30, 32 can still permit the escape of litter etc.

Toole et al. discloses a litter box 10 having lower and upper portions L, U joined by clips 18. Upright sides 12, 13, 14, 15 form a top opening 17 for the cat to enter the box 10. The height of the sides 12, 13, 14, 15 is optimized to be low enough for entry of the cat yet high enough to prevent the escape of litter etc. While the optimized sides may reduce the amount of litter etc. which reaches the floor compared to using a litter box with "shorter" walls, a substantial amount of litter can still pass over the walls because the walls must be less than an ideal height for blocking litter etc. The taller the sides are made, more cats are excluded from using this box 10 (older cats, handicapped cats, simply lazy cats, cats who will not go into a box

they cannot see out of etc.) Additionally, litter etc. can become trapped between the upper and lower portions U, L. This “urine trap” can actually result in the need for more frequent cleaning in order to prevent the growth of mold and bacteria.

It was the inventive insight of the present inventor that animals naturally turn to face an entrance opening when they enter a container which they can not see out of except for the entrance opening and that an animal does not spray urine or flick litter etc. in the direction of its head. The present invention takes advantage of these insights by providing a litter box with walls of adequate height to substantially prevent litter etc. from passing over and which forces an animal to face the entrance opening so that litter etc. is not directed toward the entrance opening. Additionally, the entrance opening is shaped and located at a height which further reduces the passage of litter etc. through the entrance opening and the box is of a one-piece design to eliminate “urine traps.” No prior art of record reasonably discloses or reasonably suggests providing such a one-piece box without “urine traps” and with “tall walls” for blocking litter.

The entrance opening of the Gruel device is positioned near a corner so that it would be difficult for a cat to comfortably face the opening. As a result, the walls may be “tall” but the cat may often be facing in a direction where litter etc. will be directly projected toward the entrance opening. Also, the Gruel device has various openings on three walls which means the cat is likely to be facing away from some kind of opening and/or facing in a direction other than the most desirable direction.

The Tool et al. device simply tries to make a compromise in optimizing the height of the sides. Thus, the walls are not as tall as desirable to block the escape of litter etc. and litter etc. can escape in any direction.

The examiner stated that “It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gruel to include the entrance opening being spaced at least 6 inches from a bottom of the container as taught by Toole et al. in order to prevent escape of litter and excreta during use by a cat.” However, Tool et al. teaches having no openings and optimizing the height of the sides. If the Gruel device were modified to follow the

teachings of Toole et al., the opening of Gruel would be eliminated not raised. Even if the Gruel Device is permitted to be modified as stated by the Examiner, the modified Gruel device still does not disclose or suggest the present invention as now claimed because the raised opening of Gruel is not positioned on the wall to force the cat to face the opening as required by the present invention as defined by the amended claims.

The Examiner also stated that “it would have been obvious to one skilled in the art at the time the invention was made to make the invention circular, since there is no invention in merely changing the shape or form of an article without changing its function except in a design patent, and as evidenced by the included references, US Patent Nos. 6,135,057 to Cummings and Des. 230,285 to Dilley demonstrating an opening for a cat being circular”. It is noted that the rectangular opening of Gruel simply provides the function of inlet and egress passage while the properly positioned circular opening of the present invention provides an additional function of litter shield because there is reduced open area at the lower end of the opening. It is also noted that each of the circular openings cited by the Examiner are located in a cover for a litter box rather than the side wall of the litter box itself as required by the present invention as defined by the amended claims.

Amended independent claims 1 and 15, and claims dependent therefrom, are allowable because they each require “wherein the entrance opening is circular and has a diameter in the range of about eight inches to about ten inches”, “wherein the entrance opening is spaced below the top opening of the container and spaced at least six inches above the base wall of the container”, “wherein the entrance opening is laterally centered on the sidewall in which the entrance opening is formed”, “wherein the sidewalls are free of any openings other than the entrance opening”, “wherein the entrance opening is free of coverings so that the animal can see through the entrance opening”, “wherein the sidewalls form a height of the container which substantially prevents the animal from seeing over the sidewalls while standing within the hollow interior space”, and “whereby the animal faces the entrance opening while within the hollow interior space to see out of the container through the entrance opening and thereby substantially avoid escape of urine, feces and litter through the entrance opening while the animal is within the container”. No prior art of record reasonably discloses or suggests the

present invention as now defined by independent claims 1 and 15. Reconsideration and withdrawal of the rejection is requested.

Claims 19 and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gruel in view of Denesuk et al. (US 6,196,156).

Claims 19 and 20 are allowable as depending from an allowable base claim as discussed above and independently allowable for novel and nonobvious matter contained therein. Reconsideration and withdrawal of the rejection is requested. It is noted that the Denesuk et al. device relates to bedding rather than a litter box.

Claims 13 and 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gruel in view of Reid (US D380,880).

Claims 13 and 14 are allowable as depending from an allowable base claim as discussed above and independently allowable for novel and nonobvious matter contained therein. Reconsideration and withdrawal of the rejection is requested.

The specification has been amended to correct a typographical error located during the preparation of this amendment.

New dependent claims 21 to 24 have been added to further define the present invention. The present invention provides a litter box of one-piece construction which eliminates "urine traps."

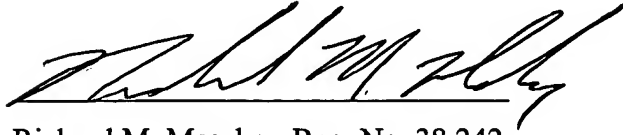
In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is found that the present amendment does not place the application in a condition for allowance, applicant's undersigned attorney requests that the examiner initiate a telephone interview to expedite prosecution of the application.

If there are any fees resulting from this communication, please charge same to our  
Deposit Account No. 16-2326.

Respectfully submitted,

PORTER, WRIGHT, MORRIS & ARTHUR LLP

October 19, 2004

A handwritten signature in black ink, appearing to read "Richard M. Mescher", written over a horizontal line.

Richard M. Mescher, Reg. No. 38,242

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